

## Article 6F.

### Achieving a Better Life Experience Program Trust.

#### **§ 147-86.70. Policy and definitions.**

(a) Policy. – The General Assembly of North Carolina hereby finds and declares that encouraging and assisting individuals and families in saving private funds for the purpose of supporting individuals with disabilities, as authorized in the federal Achieving a Better Life Experience (ABLE) Act, to maintain health, independence, and a better quality of life is fully consistent with and furthers the long-established policy of the State to provide tools that strengthen opportunities for personal economic development and long-term financial planning.

(b) Definitions. – The following definitions apply in this section:

- (1) ABLE account. – An account established and owned by an eligible individual and maintained under this Article. A parent, guardian, or agent under a power of attorney may act on behalf of an account owner.
- (2) Account owner. – The person who enters into an ABLE savings agreement pursuant to the provisions of this Article. The account owner must be the designated beneficiary.
- (3) Board. – The ABLE Program Board of Trustees established in G.S. 147-86.72.
- (4) Repealed by Session Laws 2016-56, s. 9(c), effective June 30, 2016.
- (5) Designated beneficiary. – The eligible individual who established and owns an ABLE account.
- (6) Disability certification. – Defined in 26 U.S.C. § 529A(e)(2).
- (7) Eligible individual. – Defined in 26 U.S.C. § 529A(e)(1).
- (8) Federal ABLE Act. – Division B of the Tax Increase Prevention Act of 2014, P.L. 113-295, the Achieving a Better Life Experience Act of 2014.
- (9) Member of the family. – A brother, sister, stepbrother, or stepsister.
- (10) Qualified disability expense. – Defined in 26 U.S.C. § 529A(e)(5). (2015-203, s. 1; 2016-56, s. 9(c); 2017-212, s. 3.2(a).)

#### **§ 147-86.71. ABLE Program.**

(a) Achieving a Better Life Experience (ABLE) Program Trust. – There is established an ABLE Program Trust to be administered by the ABLE Program Board of Trustees established in G.S. 147-86.72 to enable contributors to save funds to meet the costs of the qualified disability expenses of eligible individuals.

(b) Accounts. – The following provisions apply to an ABLE account:

- (1) An account owner or contributor may establish an account by making an initial contribution to the ABLE Program Trust, signing an application form approved by the Board or its designee, and naming the designated beneficiary. If the contributor is not the account owner, the account owner or the account owner's parent, guardian, trustee, or agent shall also sign the application form.
- (2) Any person may make contributions to an account after the account is opened.
- (3) Contributions to an account shall be made only in U.S. Dollars.
- (4) Contributions to an account shall not exceed maximum contribution limits applicable to program accounts in accordance with the federal ABLE Act.
- (5) An account owner may change the designated beneficiary of an account to an eligible individual who is a member of the family of the former designated

beneficiary. At the direction of an account owner, all or a portion of an account may be transferred to another account of which the designated beneficiary is a member of the family of the designated beneficiary of the transferee account if the transferee account was created pursuant to this section or in accordance with the federal ABLE Act.

(c) Contributions. – The Board is authorized to accept, hold, invest, and disburse contributions, and interest earned on such contributions, from contributors as trustees of the ABLE Program Trust. The Board shall hold all contributions to the ABLE Program Trust, and any earnings thereon, in the ABLE Program Trust and shall invest the contributions in accordance with this section. The assets of the ABLE Program Trust shall at all times be preserved, invested, and expended for the purpose of providing benefits to designated beneficiaries and paying reasonable expenses of administering the ABLE Program Trust and investing the assets of the ABLE Program Trust. Nothing in this Article shall be construed to prohibit the Board from accepting, holding, and investing contributions from contributors who reside outside of North Carolina. Neither the contributions to the ABLE Program Trust, nor the earnings thereon, shall be considered State monies, assets of the State, or State revenue for any purpose. An account or a legal or beneficial interest in an account is not subject to attachment, levy, or execution by a creditor of the designated beneficiary.

(d) Limitations. – The Board, in administering the ABLE Program Trust, shall ensure each of the following:

- (1) A rollover from an ABLE account shall constitute a qualified rollover if the rollover distribution is in accordance with the federal ABLE Act.
- (2) A person may make contributions for a taxable year for the benefit of an individual who is an eligible individual for the taxable year to an ABLE account that is established to meet the qualified disability expenses of the designated beneficiary of the account.
- (3) A designated beneficiary is limited to one ABLE account.
- (4) Repealed by Session Laws 2016-56, s. 9(d), effective June 30, 2016.
- (5) Except as permitted under the federal ABLE Act, a person does not direct the investment of any contributions to or earnings from the Achieving a Better Life Experience Program more than two times each year.
- (6) An account or a legal or beneficial interest in an account is not assignable, pledged, or otherwise used to secure or obtain a loan or other advancement.
- (7) Separate records and accounting are maintained for each ABLE account.
- (8) Reports are made no less frequently than annually to each ABLE account owner.
- (9) A parent, trustee, or guardian appointed as a signatory of an ABLE account does not have or acquire any beneficial interest in the account and administers the account for the benefit of the designated beneficiary. (2015-203, s. 1; 2016-56, ss. 9(a), (d); 2017-212, s. 3.2(b).)

#### **§ 147-86.72. ABLE Program Board of Trustees.**

(a) Board. – There is established a Board of Trustees to provide oversight of the general administration and proper operation of the ABLE Program and to determine the appropriate investment strategy for the ABLE Program Trust. The Board of Trustees shall consist of the following six members:

- (1) The State Treasurer, ex officio, or the State Treasurer's designee, as chair.
- (2) The Commissioner of Banks, ex officio, or the Commissioner of Banks' designee.
- (3) The Secretary of the North Carolina Department of Health and Human Services, ex officio, or the Secretary's designee.
- (4) A person appointed by the Governor having experience in investments and finance.
- (5) A person appointed by the President Pro Tempore of the Senate having experience in advocacy for the disabled.
- (6) A person appointed by the Speaker of the House of Representatives that is an immediate family member of an eligible individual or a guardian of an eligible individual.

(b) Terms. – The members of the Board, except those members serving in an ex officio capacity, shall be appointed for terms of three years and shall serve until their successors are appointed and qualified. Vacancies are filled in the same manner as the original appointment. No appointed member of the Board may serve longer than any of the following:

- (1) Two consecutive three-year terms.
- (2) Three consecutive terms of any length, in the event that one or more of the terms is for less than three years in duration or the member serves a partial term as a result of filling a vacancy.
- (3) Eight consecutive years, regardless of term lengths.

(c) Duties. – The Board of Trustees is authorized to:

- (1) Delegate the authority to the State Treasurer to develop and perform all functions necessary and desirable to (i) administer the ABLE Program Trust in such a manner as to meet and comply with the requirements of the federal ABLE Act and federal regulations under the Act, (ii) implement the investment strategy of the Board, and (iii) provide other services as the Board shall deem necessary to facilitate participation in the ABLE Program Trust.
- (2) Notwithstanding provisions of Article 3 of Chapter 143 of the General Statutes, engage the services of consultants on a contract basis for rendering professional and technical assistance and advice.
- (3) Notwithstanding the provisions of Article 3 of Chapter 143 of the General Statutes, retain the services of auditors, attorneys, investment counseling firms, custodians, or other persons or firms possessing specialized skills or knowledge necessary for the proper administration of investment programs that the Board administers pursuant to this Article.
- (4) Develop marketing plans and promotional material.
- (5) Establish the methods by which the funds held in accounts shall be dispersed.
- (6) Establish the method by which funds shall be allocated to pay for administrative costs.
- (7) Do all things necessary and proper to carry out the purposes of this act.

(d) Investments. – The Board shall determine and document in an investment policy statement an appropriate investment strategy for the ABLE Program Trust containing one or more forms of investment or strategies for investment from which account owners may select. The Board shall authorize the State Treasurer to be responsible for engaging and discharging investment managers and service providers, including contracting and contract monitoring, to implement the

investment strategy established by the Board. All amounts maintained in an account shall be invested according to the account owner's election of one or more of the strategies approved by the Board. Each strategy may include a combination of fixed income assets and preferred or common stocks issued by any company incorporated, or otherwise located within or outside the United States, or other appropriate investment instruments to achieve long-term return through a combination of capital appreciation and current income. If the Board approves multiple forms of investment as investment strategy options, transfers of an account owner's accumulated funds shall be permitted among the various approved forms of investments, subject to reasonable restrictions approved by the Board.

(e) Discharge of Duties by the Board. – The assets of the ABLE Program Trust shall be held in trust for the designated beneficiaries. The assets of the ABLE Program Trust shall at all times be preserved, invested, and expended for the exclusive purpose of providing benefits to designated beneficiaries and paying reasonable expenses of administering the ABLE Program Trust and investing the assets of the ABLE Program Trust. Compliance by the Board with this section must be determined in light of the facts and circumstances existing at the time of the Board's decision or action and not by hindsight. The Board shall discharge its duties with respect to the ABLE Program Trust as follows:

- (1) Solely in the interest of the designated beneficiaries.
- (2) With the care, skill, and caution under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose.
- (3) Impartially, taking into account any differing interests of designated beneficiaries.
- (4) Incurring only costs that are appropriate and reasonable.
- (5) In accordance with a good-faith interpretation of the law governing the ABLE Program Trust.

(f) Immunity. – A person serving on the ABLE Board of Trustees shall be immune individually from civil liability for monetary damages, and exempt to the extent covered by insurance, for any act or failure to act arising out of that service except where any of the following apply:

- (1) The person was not acting within the scope of that person's official duties.
- (2) The person was not acting in good faith.
- (3) The person committed gross negligence or willful or wanton misconduct that resulted in the damages or injury.
- (4) The person derived an improper personal financial benefit, either directly or indirectly, from the transaction.

(g) Report. – The Board shall submit an annual evaluation of the ABLE Program and prepare and submit an annual report of such evaluation to the Joint Legislative Oversight Committee on Health and Human Services.

(h) Other States Contracting for North Carolina to Provide Program. – With consent of the State Treasurer, the Board may enter into agreements with other states to either (i) allow North Carolina residents to participate in a plan operated by a contracting state with a qualified ABLE program or (ii) allow residents of other states to participate in the qualified North Carolina ABLE Program Trust.

(i) Arrangements for North Carolina Program to Be Provided in Partnership With Other States. – Notwithstanding any other provision of this Article, in addition to or in lieu of establishing

a North Carolina ABLE Program and ABLE Program Trust, the Board may do either of the following:

- (1) Enter into an agreement with one or more states, or a consortium of states, that has a qualified ABLE program for the provision of all services necessary to allow residents of North Carolina to participate in the qualified ABLE program of the other state, states, or consortium.
- (2) Facilitate or otherwise provide access to allow residents of North Carolina to participate in qualified ABLE programs operated by another state, states, or consortium.

The Board shall take action only after due diligence that includes a fiduciary analysis that indicates the qualified ABLE program offered by the other state, states, or consortium will (i) meet all the requirements of this Article and (ii) be more efficient and cost-effective than an ABLE program provided directly by the Board. If the Board enters into an arrangement authorized by this subsection, the Board shall meet on a semiannual basis to evaluate the effectiveness of the services being provided. (2015-203, s. 1; 2016-56, s. 9(b); 2017-125, ss. 5(a), 5(b).)

#### **§ 147-86.73. Administration of ABLE Program.**

(a) Administration. – The Board may delegate to the State Treasurer the authority to develop and perform all functions necessary and desirable to (i) administer the ABLE Program Trust in such a manner as to meet and comply with the requirements of the federal ABLE Act and federal regulations under the Act, (ii) implement the investment strategy established by the Board, and (iii) provide such other services as the State Treasurer shall deem necessary to facilitate participation in the ABLE Program Trust. The State Treasurer is further authorized to obtain the services of such investment managers, investment advisors, service providers, or program managers as may be necessary for the proper administration, marketing, and investment of the ABLE Program Trust.

(b) Disclaimer. – Nothing in this section shall be construed to create any obligation of the State Treasurer, the State, or any agency or instrumentality of the State to guarantee for the benefit of any parent, other interested party, or designated beneficiary the rate of return or other return for any contribution to the ABLE Program Trust and the payment of interest or other return on any contribution to the ABLE Trust Fund.

(c) Fees and Costs. – The State Treasurer may establish application, account, and administration fees in an amount not to exceed the amount necessary to offset the costs of the program. The following costs may be paid directly from the ABLE Program Trust:

- (1) The costs of administration, management, investment, and operation of the ABLE Program Trust.
- (2) The costs of all actions authorized by the Board.
- (3) The costs of all actions delegated to the State Treasurer and the State Treasurer's staff by the Board under this section. Such costs shall be allocated among the designated beneficiaries in such manner as may be prescribed by the Board. The Board shall no less than annually approve a budget and allocation of costs.

(d) Means-Tested Programs. – Notwithstanding any other provision of law, an ABLE account shall not be considered a resource for purposes of means-tested State benefits.

Distributions for qualified disability expenses shall not be considered income for any State benefits eligibility program that limits eligibility based on income.

(e) Claim for Medical Assistance Benefits. – To the extent provided in subsection 26 U.S.C. § 529A(f) upon the death of a designated beneficiary, the State shall have a claim for payment from the beneficiary's account in an amount equal to the total medical assistance paid for the designated beneficiary after the establishment of the account. The State may file its claim for repayment from the account with the State Treasurer within 60 days of receiving notice from the State Treasurer of the death of the designated beneficiary. Any remaining funds in the beneficiary's account shall be distributed as provided in the account agreement or distributed to the beneficiary's estate if no other designation is made.

(f) Notice of the Death of a Designated Beneficiary. – Within 30 days of the date the State Treasurer receives notice of the death of a designated beneficiary, the State Treasurer shall provide notice of the designated beneficiary's death to the Department of Health and Human Services, Division of Medical Assistance.

(g) Repealed by Session Laws 2016-94, s. 12H.2(b), effective July 14, 2016.

(g1) Notice for Designated Beneficiary Receiving Medicaid. – The ABLE Account application package approved in accordance with G.S. 147-86.71(b)(1) shall include notice of the State's right under subsection (e) of this section to file a claim for payment from a designated beneficiary's ABLE account following the death of a beneficiary who received medical assistance benefits.

(h) Account Information. – The information related to individual ABLE accounts are not public records as defined in Chapter 132 of the General Statutes.

(i) The Department of Health and Human Services shall provide information and assistance to the Department of State Treasurer and shall enter into a data-sharing agreement with the Department of State Treasurer for the purpose of the ongoing implementation of this act. The Department of State Treasurer shall consult with other departments as needed. (2015-203, ss. 1, 2; 2016-94, ss. 12H.2(a), (b); 2017-129, s. 11.)

**§ 147-86.74:** Reserved for future codification purposes.

**§ 147-86.75:** Reserved for future codification purposes.

**§ 147-86.76:** Reserved for future codification purposes.

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